In the Supreme Court

OF THE

United States

OCTOBER TERM, 1941

No. 1125

STANDARD OIL COMPANY OF CALIFORNIA,
Appellant,

vs.

CHARLES G. JOHNSON, as Treasurer of the State of California,
Appellee.

Appeal from the Supreme Court of the State of California.

BRIEF FOR APPELLEE.

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BRIEF FOR APPELLEE.

The opinion of the Supreme Court of the State of California (R. 76) is reported at 19 Advance California Reports 125; 119 Pac. (2d) 329. The trial Court did not render an opinion; its conclusions of law and judgment are at R. 73, 74.

STATEMENT OF THE CASE.

The statement of the case contained in appellant's brief is accurate and appellee accepts it.

SUMMARY OF ARGUMENT.

Appellee in answer to the argument of appellant will show (1) that Army post exchanges are voluntary unincorporated associations of military personnel and are not instrumentalities of the government of the United States; (2) that the California Motor Vehicle Fuel License Tax Act is an excise tax imposed upon distributors of gasoline for the privilege of distributing and does not impose any direct burden upon the post exchanges; and (3) that even though it be held that post exchanges are instrumentalities of the United States Government and that the tax is levied directly upon them it is constitutional.

ARGUMENT.

I. ARMY POST EXCHANGES ARE NOT INSTRUMENTALITIES OF THE UNITED STATES GOVERNMENT.

Appellant has included in its brief a historical sketch of army post exchanges and their predecessors. The conclusion which appellant appears to glean from this discussion is that army post exchanges are authorized by Congress and by reason of this authorization together with that of the President of the United States and the Secretary of War become a part and parcel of the government of the United States and entitled

to all privileges and immunities which may attend such characterization. The difficulty with this conclusion is that the first premise upon which the whole structure depends is, in fact, not present. There is not any direct authorization for the creation of army post exchanges to be found in any Act or declaration of the Congress of the United States. Congress has never in those acts which by implication recognize the fact of existence of army post exchanges indicated any intent or desire that they be considered a "creature of Congress" or that they be considered synonymous with the United States Government or be an instrumentality thereof.[1] The following from the report of committee of the Senate on H. R. 6687 (Calendar No. 1692, Report No. 1625 of Senate, 76th Congress, 3rd Session) is pertinent on this point:

> "For example, tangible personal property purchased from a commissary or ship's store by an army or naval officer or other person so permitted to make purchases from such commissary or ship's store, is exempt from the State sales tax or use tax since the commissary or ship's store is an instrumentality of the United States and the purchaser is an authorized purchaser. *If voluntary unincorporated organizations of Army and Navy personnel such as post exchanges are held by the courts to be such instrumentalities, the same rule will apply to similar purchases from such organizations; but if they are held not to be such instrumentalities, property so pur-*

[1] See *Graves v. New York ex rel. O'Keefe*, 306 U.S. 466 at 476, where this Court said "• • • since Congress is made the sole judge of what powers within the constitutional grant are to be exercised, • • •"

*chased from them will be subject to the State sales or use tax in the same manner and to the same extent as if such purchase was made outside a Federal area. * * *"*

This language is certainly not consistent with a conception that army post exchanges were authorized by Congress as a part of the United States Government.

Appellant, however, seeks to repair the absence of this essential premise by the statement that Congress authorized the Secretary of War to promulgate the regulations which created the army post exchanges and implies that by such authorization the post exchanges had the same status as if directly created by Congress. It should be noted that the only authority granted to the Secretary of War was to "prepare a system of general regulations for the administration of the affairs of the army * * *" (Act of July 15, 1870, c. 294, sec. 20, 16 Stat. 319.) This contention of appellant was considered in *Keane v. U. S.*, 272 Fed. 577, 580 (CCA 4), and disapproved in the following language:

> "In this connection, the counsel for the Government, in his brief and argument, insists that post exchanges are governmental institutions, associations, and agencies, and says:
>
> "'It cannot be denied that such agents are established under regulations promulgated and established by the War Department.'
>
> "He refers us to Section 161 of the revised Statutes (Comp. St. Section 235) for the author-

ity of the Secretary of War to make such regulations with reference to these exchanges. The Section reads as follows:

"'The head of each department is authorized to prescribe regulations not inconsistent with law, for the government of his department, the conduct of his officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it.'

"This section only gives the heads of departments, including the Secretary of War, power to issue rules and regulations for the administration of their departments. Indeed, the power conferred by this section is administrative only (*U. S. v. George*, 228 U. S. 14, 33 Sup. Ct. 412, 57 L. Ed. 712), which means that the Secretary of War, if he had power to issue the the regulation at all, only had power to compel or permit the soldiers to establish these post exchanges in question, but could not, in the absence of the express authority of Congress, make persons not connected with his department bound by such regulations, or subject to the pains and penalties of criminal law. If a head of a department has the power to make rules which subject classes of property to forfeiture and classes of persons to penalties, that power must be expressly given him by Congress, and well defined, so as to make his rule or regulation an act of the supreme law-making body. He will get no such power from Section 161 of the Revised Statutes. *U. S. v. 11,150 pounds of Butter*, 195 Fed. 657, 115 C.C.A., 463.".

Appellee believes that the decision of the Supreme Court of California in the case at bar is amply supported by the facts and the army post exchanges are voluntary unincorporated associations of army organizations over which the War Department exercises purely a paternal influence. They are not unlike the employee organizations which are common in many of our large industrial units. These units furnish food at minimum prices, sell certain articles such as cigarettes and candy, and the funds gained from such activity are used to finance social affairs and afford recreational facilities for the employees. They are encouraged by employers as obviously such activity tends to build morale and decrease labor turn-over. Often the employer will furnish quarters for the organization. The employer, although it has some control over the organization because of its position, assumes no obligation financial or otherwise in connection with its activities. In Life Magazine, issue of April 24, 1942, some activities of an organization formed by employees of the Treasury Department of the United States are depicted. Appellant does not believe that any Court would consider this latter organization an instrumentality of the United States, nor hold an employee organization, as hereinabove described, to be an integral part of the employer organizations. In the event that the United States Government took over the industrial plant and the War Production Board specifically authorized the continuance of the employee organization and promulgated regulations regarding its operation it is inconceivable to appellee that such employee organization would be held to assume the status of an instrumentality of the United States and

all of its actions thereafter be considered governmental in character.

Yet the contention made by appellant narrows itself down to a request that this Court hold that such an organization is a part and parcel of the United States and all its acts therefore governmental in character.

Federal Land Bank v. Bismarck Lumber Co., 314 U. S. 95.

Appellee submits that army post exchanges are purely employee organizations formed under the active encouragement and assistance of the United States Army but in no respect partaking of the governmental character of the Army itself. A survey of the regulations which allow for their operation clearly sustains the accuracy of this latter statement.

Sec. 1 of A.R. 210-65 (R. 7) provides:

> "At each post, camp or station, the commanding officer will establish and maintain a post exchange whenever:
>
> "(1) There is a need for it.
>
> "(2) There are organizations present that desire to participate therein.
>
> "(3) The personnel is sufficient to profitably maintain and support such an exchange."

It should be noted that all three factors set forth above must be present to warrant the creation of a post exchange. This is necessarily the proper interpretation of the regulation for the reason that membership is not obligatory (R. 8) and the post exchange funds are obtained from the participating organizations. (R. 38.) Thus the element of profit is also an essential basis for the establishment of a post ex-

change. This requirement completely dissipates the theory of appellant that the operation of the post exchange is a required and essential part of the operation of the United States Army.

A second item of importance in this regard is the fact that the post exchange sells to all personnel and organizations authorized to purchase subsistence stores or other quartermaster supplies and to *Civilians employed or serving on military posts.* Further the purchases are not limited to articles for their own use but include anything for the use of the dependent members of the purchaser's family. (R. 63.)

The resemblance between an army post exchange and a large cooperative commercial enterprise is shown by the list of approved activities (R. 9):

> "An exchange may include when desirable, the following activities:
>
> "(1) A well stocked general store, including when deemed desirable by the council and approved by the commanding officer, a meat market, a vegetable market, and a gasoline filling station. Sales to civilians at a filling station will be limited to civilian employees of the post, camp, or station.
>
> "(2) A well-kept restaurant * * *
>
> "(3) A barber shop, laundry, tailor shop, and shoe-repair shop.
>
> "(4) * * *"

Thus a civilian who is working at the exchange as a clerk, cook or barber or at the post as a carpenter or in any other capacity, has the right to purchase gasoline for use on the highways of this state, and under appellant's theory, at a cost which would not

include the distributor's tax levied under the Motor Vehicle Fuel License Tax Act for the purpose of meeting the expense of maintaining and improving those highways.

The following excerpt from Collier's Magazine for June 27, 1941, at page 23, emphasizes the nature of the post exchange as a commercial organization:

> "Post Exchange Officer Maj. H. E. McGaffey called from retirement after twenty-four years in the Army and ordered to set up Blanding's canteens, launched the business last November 9th in a one-room building with an operating force consisting of himself, four non-coms, one private, one light truck, and of capital not a red cent except $60 of his own which he converted into change. Today the P-X employs *440 civilians* and 198 soldiers, has an $18,500 pay roll every fifteen days, sells around $350,000 worth of merchandise every month and turns over its entire stock every twenty days. It's an enterprise for which almost any businessman would sell his soul. The P-X operates the Central Exchange, which serves as headquarters; thirty-five canteens (one for each regiment), three warehouses, light trucks, three bus terminals, seven taxis, eight public filling stations, a garage, a restaurant, four cafeterias and a privately operated shoe repair shop." (Emphasis ours.)

In view of the potential size of the operations of post exchanges as illustrated in the above quotation, the provisions of Sec. 48 A. R. 210-65 (R. 38) are especially significant:

> "(a) The expense of fitting up the quarters of an exchange and procuring the necessary articles for the first stock and fixtures will be met

by assessment from the funds of the several organizations which make up the membership of the exchange, or these will be contracted for, or procured on credit. When procured on credit, the bills will be paid from the first profits. *The post exchange is responsible for the debt, and not the Government.* This will be made perfectly clear to those extending credit. (Emphasis ours.)

The United States Government has thus specifically denied any responsibility or liability for the activities of an army post exchange. Appellee submits that this provision clearly shows the purely paternal nature of the government's interest in the post exchange.

Appellant has directed this Court's attention to various opinions of the Judge Advocate General to the effect that an army post exchange is a governmental instrumentality. Aside from the fact that such opinions have no real value in the determination of this question, it is interesting to note that the opinions of the Judge Advocate General have not always been consistent with the conclusion that post exchanges are instrumentalities of the United States Government. The rulings of the Judge Advocate General have included opinions that the United States is not interested in the prosecution of the drawers of dishonored checks held by a post exchange (R. 45); that the post exchange is subject to the stamp tax imposed by the Revenue Act of October 22, 1914 (R. 48) and the freight tax imposed by the Revenue Act of October 3, 1917 (R. 48) which exempted "services rendered to the United States". (38 Stats. 745, 752.) Further, the Judge Advocate General in an opinion rendered June 4, 1918, said:

> "* * * A post exchange is a voluntary unincorporated cooperative association of Army organizations, a kind of cooperative store, in which all share in the benefits and all assume a position analogous to partners. Contracts to purchase goods entered into by the proper officers of a post exchange should be tested by the same rules of obligation which govern like agreements of individuals * * *" (R. 50.)

Appellee submits that a consideration of the facts discussed hereinabove necessitates a conclusion that army post exchanges are not instrumentalities or agencies of the United States Government through which it exercises its constitutional authority. The direct refusal to accept any liability for the obligations of the post exchange clearly indicates that the Secretary of War does not regard the post exchanges as integral parts of the United States Army. It is hardly conceivable that the Secretary of War would issue a statement that the obligations incurred by the Quartermaster's Corps of the United States Army are not the obligations of the United States Government. The distinction between the treatment of the Quartermaster's Corps and the post exchange is indicative of the fundamental difference between the former as an integral part of the Army and the latter as an independent "employee" organization.

Without here questioning whether there is constitutional authority for the Government of the United States engaging in the restaurant, barbering or taxi businesses if it desired to do so, it is clear that this has not been attempted in the case of the army post

exchange. If appellant admits, as appellee believes it must, that the army post exchange is not synonymous with the United States Army, appellant is faced with the burden of showing some legislative authority for the creation by the Secretary of War of a governmental instrumentality of the nature of governmental corporations such as the Reconstruction Finance Corporation. Appellant has not adduced a single item of legislative authority which specifically provides for the creation of army post exchanges. As discussed heretofore the authority given to the Secretary of War to "prepare regulations for the administration of the affairs of the army" (16 Stat. 319) did not authorize that official to legislate by regulation.

United States v. George, 228 U. S. 14, 20;
International Ry v. Davidson, 257 U. S. 506, 514.

In view of this complete lack of congressional provision for the formation of post exchanges as governmental instrumentalities appellee submits that such organizations should be regarded as in the same category as private commercial units engaged in selling merchandise and furnishing services to soldiers and civilians. If, as appellant contends, there is an implied immunity of all instrumentalities of the United States Government every presumption should be indulged against any interpretation which would deprive the states of their taxing jurisdiction over what is in all physical respects a huge commercial enterprise. The validity of appellee's contention becomes clear when it is realized that a contrary interpretation will deprive the states of their taxing juris-

diction over sales to civilian employees of the exchange, and of the post, undoubtedly residents of the State, to the detriment both of the State and of the citizens engaged in business therein. In this regard the excerpt from Collier's Magazine shows four hundred and forty civilian employees at the Camp Blanding Post Exchange and, of course, there are in addition large numbers of civilians employed at each army camp.

Appellant has, at page 17 of its brief, referred to the uses to which the profits of the post exchange are put, and stated that those purposes are governmental and impliedly concluded that the post exchange is by reason thereof a governmental instrumentality. Without discussing the merits of the premise set forth by appellant it is sufficient to refer to the language of this Court in *Allan v. Regents of University System of Georgia*, 304 U. S. 439, at page 452, which appellee believes is directly applicable in this argument:

> "If it be conceded that the education of its prospective citizens is an essential governmental function of Georgia, as necessary to the preservation of the State as is the maintenance of its executive, legislative and judicial branches, *it does not follow that if the State elects to provide the funds for any of these purposes by conducting a business, the application of the avails in aid of necessary governmental functions withdraws the business from the field of Federal taxation.*" (Emphasis ours.)

Appellant cites five cases upholding its position. On the converse side of the judicial picture of this problem are five cases, in addition to the case at bar, in

which the Courts have upheld the contention made by appellee:

Keane v. United States, 272 Fed. 577 (C. C. A. 4);

Pan-American Petroleum Corp. v. Alabama, 67 Fed. (2d) 590 (C. C. A. 5), certiorari denied, 291 U. S. 670;

Thirty-First Infantry Post Exchange v. Posadas, 54 Phil. Rep. 866, certiorari denied, 283 U. S. 839;

People v. Standard Oil Company of California, 218 Cal. 123 (reversed on other grounds, 291 U. S. 242);

Post Exchange, The Army War College v. District of Columbia (Board of Tax Appeals of District of Columbia, Opinion No. 283, July 24, 1941).

While the number of opinions of other Courts is not pertinent here appellee feels that they do indicate that there is considerable judicial dissent from the position that army post exchanges are instrumentalities of the United States Government. Appellee submits that the facts show that the correct view is as expressed by the Supreme Court of California in *People v. Standard Oil Company of California,* supra, at page 128, that an army post exchange is:

> "An organization largely engaged in business of a private nature and that sales to it should not be beyond the reach of the taxing power of the state wherein it is located and that it is not one of those agencies through which the Federal government directly exercises its constitutional or sovereign power."

II. THE CALIFORNIA MOTOR VEHICLE FUEL LICENSE TAX ACT DOES NOT IMPOSE A TAX UPON SALES TO ARMY POST EXCHANGES.

(The relevant provisions of California Motor Vehicle Fuel License Tax Act (California Stats. 1923, page 571, as amended) are set forth in appendix of this brief.)

Appellant initiates its argument on this point with a discussion of the contention that a state cannot levy a tax directly upon an instrumentality of the Federal Government. A brief answer to that argument will be made hereafter. However, the contention of appellant is without pertinence to the case at bar for the reason that the California Motor Vehicle Fuel License Tax Act levies a tax on the vendor and not on the vendee.

Appellant, however, contends that the legal incidence of the tax is upon the vendee. Appellant relies for this conclusion on the provisions of section 11 of the statute (Appendix, pp. iii-iv), which provides for refund to the purchaser of any amount of tax which he paid, either as part of the purchase price or directly, where the fuel was not used on the highways. Appellee believes that there is no basis for the conclusion which appellant draws from section 11 of the Act. This provision, as does section 10 (Appendix, pp. ii-iii) granting, among other things, an exemption of fuel to be exported, indicates the legislative intention to impose the tax for the privilege of distributing motor vehicle fuel measured by the gallonage actually used on the public highways of this state. The legislature knew that in nearly every instance the distributor

would reimburse itself for the amount of tax levied upon it and in section 11 adopted the only feasible and just means of refund.

The nature of the tax is clear from the statute. It is specifically provided in section 3 (Appendix p. i):

> "A license tax is hereby imposed for the privilege of distributing * * * any motor vehicle fuel * * *"

Section 4 provides that the tax shall be a lien on all property of the distributor. (Appendix, pp. i-ii.)

Section 16 provides for an action only by the *distributor* for the recovery of tax paid under protest. (Appendix, pp. iv-v.)

There is not a single word in the statute which places any liability for the tax upon the vendee.

The Appellate Courts of California have consistently held the Motor Vehicle Fuel License Tax Act to be an "excise or occupation tax upon distributors of motor vehicle fuel".[2]

People v. Ventura Refining Co., 204 Cal. 286, 294;

Rio Grande Oil Co. v. City of Los Angeles, 6 Cal. App. (2d) 200, 201;

Standard Oil Co. v. Johnson, 10 Cal. (2d) 758, 767.

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[2]Cf. cases involving Retail Sales Tax Act of California which contains a specific reimbursement section (Section 8½, Retail Sales Tax Act).

DeAryan v. Akers, 12 Cal. (2d) 781;

National Ice and Cold Storage Co. v. Pacific Fruit Express, 11 Cal. (2d) 283.

See also:

Western Lithograph Co. v. State Board of Equalization, 11 Cal. (2d) 156, 162-3.

Under the rule set forth in *Federal Land Bank v. Bismarck Lumber Co.,* 314 U. S. 95, these determinations of the incidence of the tax by the California Courts are controlling.

Appellee submits that appellant's contentions on this point are without merit and that the California Motor Vehicle Fuel License Tax Act does not impose any tax upon the vendee of motor vehicle fuel.

A very similar motor vehicle fuel tax act was considered by the Supreme Court of North Dakota in *Federal Land Bank of St. Paul v. De Rochford,* 287 N. W. 522, 69 N. D. 382 (1939).[3] The North Dakota Fuel Tax Act there involved levied a gallonage tax on dealers, provided for "passing on" to the vendee and contained a refund provision nearly identical with section 11 of the California Act. The Supreme Court of North Dakota in an exhaustive opinion held that the tax was levied on the privilege of engaging in the sale of motor vehicle fuel and was not a tax on the Federal Land Bank. This conclusion applies equally to the tax here in question and appellee submits that this tax was properly levied upon appellant.

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[3]It should be noted that the government has seemingly accepted the interpretation of the North Dakota Court in the *DeRochford* case. See Appendix A, page 74, Brief of Solicitor General in *Federal Land Bank v. Bismarck Lumber Co.,* supra.

III. A DIRECT TAX UPON AN INSTRUMENTALITY OF THE FEDERAL GOVERNMENT IS NOT INVALID.

Although appellee believes that the taxability of federal instrumentalities is not involved in the case at bar for the reasons discussed heretofore, appellant's reference to the contention makes it necessary to include a very brief discussion upon it.

Unquestionably Congress has the power to create governmental instrumentalities and to protect these instrumentalities, in their functioning within their constitutional jurisdiction, by exemption from state taxation.

Federal Land Bank v. Bismarck Lumber Co., supra;

Pitman v. Home Owners Loan Corp., 308 U. S. 21.

However, there is considerable question whether such immunity exists in the absence of congressional action.

Graves v. New York ex rel. O'Keefe, 306 U. S. U. S. 46, 478;

Stokes, State Taxation and the New Federal Instrumentalities, 22 Iowa Law Review 39, 49.

This question looms larger where the particular instrumentality engages nearly entirely in activities which are of the nature of commercial business enterprises.

Cf. *Allen v. Regents of University System of Georgia*, 304 U. S. 439.

As the solicitor general said in the petitioner's brief in *Federal Land Bank v. Bismarck Lumber Co.*, supra (p. 52, Petitioner's Brief):

> "'The implication necessarily drawn from these decisions is that the tax immunity of the United States and its instrumentalities is, within broad limits, a question simply of congressional enactment. There are, it is true, constitutional limitations. But as a matter of rudimentary constitutional theory they leave to Congress a broad field.'"

Assuming that this is a correct exposition of the decisions, the conclusion is inescapable that there is no general immunity from state taxation in favor of army post exchanges.

See Senate Committee Report No. 1625, page 3 this brief.

CONCLUSION.

An army post exchange is not the United States nor is it an instrumentality thereof. It is a private cooperative enterprise in which army personnel cooperate. Congress has not granted to it any immunity from state taxation and there is no basis for any implied immunity.

It is accordingly respectfully submitted that the decision below should be affirmed.

Dated, San Francisco, California,
April 29, 1942.

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(Appendix Follows.)

Appendix

CALIFORNIA MOTOR VEHICLE FUEL LICENSE TAX ACT. (STATUTES 1923, PAGE 571, AS AMENDED.)

"Sec. 3. A license tax is hereby imposed for the privilege of distributing, within the meaning of section 7 of this act, any motor vehicle fuel. Said license tax shall be according to or measured by the gallonage of motor vehicle fuel so distributed in this State and shall be at the rate of three cents for each gallon of such fuel refined, manufactured, produced, blended or compounded by such distributor in this State and so distributed by him in this State, or imported by such distributor into and so distributed by him in this State otherwise than in the original package or container in which such motor vehicle fuel was imported into this State, and for each gallon of motor vehicle fuel imported into this State and thereafter acquired by such distributor in the original package or container in which the same was imported and thereafter so distributed by such distributor otherwise than in the original package or container in which the same was imported into this State."

"Sec. 4. License taxes herein required to be paid shall be payable in monthly insfallments to the State Controller for the month ending April 30, 1931, and each and every calendar month thereafter. The license tax shall be a lien upon all property of the distributor, attaching at the time of delivery or distribution subject to said license tax, having the effect of an execution duly levied against all property of the dis-

tributor, and remaining until the license tax is paid, or the property sold in payment thereof. * * *

"The Controller must also immediately transmit notice of such delinquency to the Attorney General who shall at once proceed to collect all sums due to the State from any such distributor hereunder by bringing suit against the necessary parties to effect forfeiture of the bond or bonds of the distributor or of the money or securities deposited by the distributor with the State Treasurer in accordance with the terms of section 2 of this act, reducing any deficiency to judgment against the distributor.

* * * * * * *

"In any suit brought to enforce the rights of the State hereunder the assessment roll prepared by the State Board of Equalization pursuant to section 6 of this act, or a copy of so much thereof as is applicable in such suit, duly certified by the Controller showing unpaid license taxes assessed against any distributor, shall be prima facie evidence of the assessment of the license tax, the delinquency thereof, the amount of the license tax, penalties and costs due and unpaid to the State, that the distributor is indebted to the people of the State of California in the amount of such license tax and penalties therein appearing unpaid and that all the forms of law in relation to the assessment and levy of such license tax have been fully complied with by all persons required to perform administrative duties under this act."

"Sec. 10. The provisions of this act requiring the payment of license taxes shall not be held or construed

to apply to motor vehicle fuel imported into this State in interstate or foreign commerce and intended to be sold in the original and unbroken tank cars or other original receptacles, containers or packages and so sold while the same are in interstate or foreign commerce, nor to any motor vehicle fuel exported from this State by the distributor or delivered by the distributor to any vessel clearing from a port of this State for a port outside of this State and actually exported from this State in such vessel, nor to any motor vehicle fuel sold to the government of the United States or any department thereof for official use of said government, but every distributor shall be required to report such exports and sales to the State Board of Equalization in such detail as that board may require, otherwise the exemption herein granted shall be null and void and all such fuel shall be considered distributed in this State subject fully to the provisions of this act. * * *"

"Sec. 11. Any person, firm, association or corporation who shall buy and use any motor vehicle fuel for purposes other than in motor vehicles operated upon the public highways of the State of California, or who shall export the same for use outside of this State, or any employee of the United States Government, who shall buy any motor vehicle fuel and use the same exclusively in the transportation of rural free delivery mail and special delivery mail or the government of the United States or any department thereof which buys motor vehicle fuel for official use

of said government or department and on which fuel no claim for exemption from payment of the tax imposed by this statute could be filed in accordance with section 10 of this act and who shall have paid any license tax for such motor vehicle fuel hereby required to be paid, either directly or to the vendor from whom it was purchased, or indirectly by the adding of the amount of such license tax to the price of such fuel, shall be reimbursed and repaid the amount of such license tax paid by him or it upon presenting to the State Controller an affidavit supported by the original invoice or invoices showing such purchase, which affidavit shall be verified by the oath of the claimant and shall state the total amount of such fuel so purchased and that the claimant has paid the price thereof and the manner and the equipment in which the claimant has used the same; provided, however, that any motor vehicle fuel carried from this State in the fuel tank of a motor vehicle shall not be considered as exported from this State. * * *"

"Sec. 16. No injunction or writ of mandate or other legal or equitable process shall ever issue in any suit, action or proceeding in any court against this State or against any officer thereof, to prevent or enjoin the collection under this act of any license tax assessed by the State Board of Equalization; but after payment of any such license tax under protest duly verified and setting forth the grounds of objection to the legality of such license tax, the distributor paying such license tax may bring an action against the State

Treasurer in the superior court of the county of Sacramento for the recovery of the license tax so paid under protest. * * *

"In no case shall any judgment be rendered in favor of the plaintiff in any action brought against the State Treasurer to recover any license tax paid hereunder, when such action is brought by or in the name of an assignee of the distributor paying said license tax, or by any person, company or corporation other than the person, company or corporation that has paid such license tax."